1: Messing E-5 (1953-1954)1957 MP5 Ambara MP5

178 is more affected because of orders sent with increasing rapidity and urgency from the central government at Addis Ababa. Sometimes the central government itself gives conservative lip service to some old structure, while quietly modernizing the function.

1. Land Tenure

A. Political Aspects of the Old Tradition:

631 For many centuries Abyssinia was a confederation of states governed by princes, who recognized the superiority of one of them--the "king of kings"; except for occasional centralization of power in the hands of a particular monarch. Only in very recent times, since the late 19th century, does centralization seem to have developed with greater permanency.

631 423 As a result of this social structure, every subject is in some way a functionary of the ruling power. This may infringe on his private property at any time, and he is bound to various labors and obligations. In principle, all land is considered the ultimate property of the power ruling at the top of the social pyramid.

423 All land tenure is therefore considered subject to the final approval of the "king of kings". This [671] principle was recognized in the ancient law code "Fetha Nagast", which, however, formally recognized the principle of private land property, to be expropriated only in case of rebellion. Private land property was further reaffirmed by clause 9 of the Penal Code of 1930, and

1: Messing E-5 (1953-1954)1957 MP5 Amhara MP5

631 565 dominant role in the rural administration. Most of the "awraja gäj" and "wored̈a" chiefs are from medium and lower provincial nobility. In Addis Ababa, the "Senate" 646 566 or Upper House of the Parliament instituted by Emperor Haile Selassie, is appointed from the higher nobility, the "Ḥakwonent", while the Deputies of the Lower House are selected, with imperial approval, from the lower country gentry, largely from the Amhara, Tigre, and Shoa areas.

643 631 178 565 Many special privileges of regional nobility have been abrogated by the present Emperor: The Wag Shum", hereditary ruler of the sub-province of Wag since the Zagwe dynasty of the 13th century, has been abrogated by him; also the "Beher Negash", the "King of the Sea", hereditary ruler of the Red Sea coast, was abrogated; also the Muslim Ethiopian dynasty of Jimma, which Menelik II had permitted to continue in accordance with the treaty of peaceful surrender (ostensibly because the present heir had joined the Italians).

The least changed position in the structure of administration is that of the čheqa shum, who forms its broad base.

4. Customary Law and Justice

671 The foremost characteristics of traditional Abyssinian law and justice seem to be that they are based on the power hierarchy of social structure; that they permit and even encourage considerable subjective inter-

1: Messing E-5 (1953-1954)1957 MP5 Amhara MP5

671 pretation of the part of the judge; and that they make no sharp distinctions between civil and criminal legal procedures--perhaps because both cases are considered equally disturbing to the society.

A. Abyssinian Law Codes.

The legal patterns of behavior that one can observe in actual practice seem often based on considerations of an unwritten kinship common law reminiscent of the Arab bedouin; at other times of the prestige-power of medieval feudal lords or of African chiefs who "can do no wrong". This pattern was probably little challenged until the 13th century A.D., when the power of the church increased so vastly with the resumption of power of the "Solomonic Dynasty".The earlier pattern was one of absolute power, quick decisions, swift punishment, Much of it remained until the 20th century, and, in remote old-Amhara areas, to this day. It is referred to as "Sǝbawi heg" (Man-made Law).

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627 To this older, unwritten code belongs the practice of "blood money", payable to the kinfolk of the murder victim, provided they are willing to accept payment in place of bloody revenge. A weaker kin group usually accepts, but a stronger would be ashamed to take money in place of a life, and resulting feuds, taking dozens of lives, have been known to continue for half a century in remote rural areas. The old price used to be the "semanya" (lit. 80, i.e. 80 Maria Theresa Thalers), as much as a common man could be expected to

accumulate in a lifetime. The present price is usually Eth$1000.-.

This practice is so strong that even at present a judge of a semi-modern court in Addis Ababa will suspend a prison sentence for involuntary manslaughter on condition that the murderer accumulate this sum and pay it to the victim's kinfolk--a wise decision preventing a new chain of murders. Recently a uniformed policeman in Addis Ababa, who was under this sentence for just that crime, made his tour among resident Europeans in the business district, begging money, with a letter in English explaining his need, signed by his own superior officer!

The absolute powers of the "ras" or "negus" in the past were limited only by the geographical boundaries of their effective military and administrative realms. All of them sat in judgment of their subjects, and combined legislative, judicial and executive powers in their persons. But each subject had the right to appeal directly to this highest authority against unjust treatment by a lower officer, provided he could throw himself in the path of the ruler and catch his attention. This right to "abyet" ("Hear me") continues to this day.

Nearly all "ras" and "negus" of the past maintained political prisons for their noble relatives who might become contenders to the throne. These prisons were not walled, but located on inaccessible mountain tops, "amba", and sometimes referred to as "wäheni". One such "wäheni" was located at a place called Geshan, in the old, smaller, Begemdir district, and was used by the kings of Gondar

1: Messing E-5 (1953-1954)1957 MP5 Amhara MP5

697 from the 16th-17th centuries. When this area, which had been a sort of frontier area, became too settled, the political prison was transferred farther northwest to the edge of the escarpment leading down to the Sudan, between Chelga and Metemma.

671 175 779 A formal, written law code was superimposed on the earlier unwritten one in the 13th century, when the Abyssinian church extended its ecclesiastical code to cover also the temporal judicial behavior of lords as well as commoners, in all phases of life. This is referred to as "yäbaherya heg" (lit. the Law from Overseas), regarded as including "Moral Law" (i.e.Church Law).

This code, called the "Fetha Nägäst"(Law of the Kings) was basically derived from Roman Canon Law of Constantine, formulated at the Coptic Synod in Egypt in the 9th and 10th centuries, then translated in 1239, by Al-Safi Abu Al-Fada'il, into the Arabic language which the Copts of Egypt had by that time adopted for their own worship also. The code was a blend of Canons of the Coptic church councils, the Justinian Code, and theBible.

It was brought to Abyssinia during the reign of King Zera-Yaqob, and translated into Geez, then in its final stages as a spoken language, by the Abyssinian priest Petros Gäbre-Egzer. The Fetha Nägäst" became the official supreme law of the land when Bishop Takla-Haymanot resurrected the "Solomonic Dynasty" about that time. Of course the Abyssinian church officially believes that the "Fetha Nägäst" is much older, and that it has never been altered.

671 779 The Code consists of 51 chapters, of which 22 deal with

1: Messing E-5 (1953-1954)1957 MP5 Amhara MP5

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779 church rules and 29 with civil and criminal law, without any distinctions between these categories:

Table 7: The Old Abyssinian Law Code: Civil-Criminal and Ecclesiastical Content.

Ecclesiastical Content:	Civil-Criminal Content:
Duties of the Church	The Sick
Divine Literature	Food, Clothing, Dwelling, Occupations, suitable for the faithful.
Christening	
Patriarchs, Bishops, Priesthood	Marriage, Dowry; Prohibition of Concubinage
Deaconship and Under-Deaconship	
Commandments for all Believers	Loans free from interest; Mortgage; Bail
The Confession of Faith	Deposit; Power of Attorney
Circumcision and other Religious customs	Liberty; Slavery; Emancipation
Monks and Nuns	Guardianship
Martyrs; Confessors; Renegades	Society; Community of the faithful
Mass; Eucharist; Prayer; Fasting	
Endowments and Pious Foundations	Constraining a Person by Force
The Holy Days	Lost and Disappeared Property
Alms	Judge and Witnesses
The Tithe; First Fruits	Worshippers; Blasphemers; Sorcerers; Murderers
Administration and Income of the Church.	Thieves; Drunkards; Usurer
	The Disobedient Son
	Sexual Relations
	The Abused
	Tenancy and Land Serfdom
	The Will and Inheritance
	Public Roads; Plots; Buildings; Water.

671 Despite its apparent and proclaimed orthodoxy, occasional amendments, either in theory or practice or both, have been made through royal decrees or common-law [588] usage. For example, concubinage has long been practiced, sometimes in the form of "dämoz" marriage, which evades the Fetha Nagast by giving the woman the status of "hired servant" receiving a periodic "wage", and in this form the practice is at present legally recognized even in the new, modern laws decreed by the present emperor.

In fact, the "Fetha Nägäst" contains an "elastic clause", which has been rediscovered under the present regime, and is cited as justification for the new, European-patterned laws which upset the ultra-conservatives. This clause advises: "Act according to your observation of the c nditions of times and seasons". This was quoted in the new Penal Code of 1930.

681 However, in the past, the draconic aspects of the criminal law in particular were most literally interpreted by many kin chiefs and feudal lords up to the beginning of the present emperor's regime. The hand of a thief was cut off, and in case of armed robbery both a hand and a foot. Rebels were similarly punished. If a person took the usual oath, "by the life of the King" and was found to have perjured himself, his tongue could be cut out. An insult to the king could be punished by blinding. A father had the right of life and death over [543 567] his children--but not over his Christianized slaves. The latter were further protected against being sold, the penalty for which offense could be the hanging of the master.

671 The intent of these guiding principles and defini-
696 tions were to aid the judge to arrive at a just verdict, preferably a "Solomonic" one. Guides were considered desirable, perhaps due to the absence of the principle of any law of precedence. The emphasis was on the "Code", and this was reinforced by the culture pattern of "literalness", in behavior.

In effect, however, these guides have enabled both draconic or bribed (and therefore lenient) judges to interpret the law with considerable subjectivity. Clever talkers-in-court never fail to use their ability to sway the public audience, which usually has a tremendous effect on the judge.

671 The effect of the "Fetha Nägäst" was to link the
777 church and state. There were usually 12 provincial chief justices, "wombär", in allusion, apparently, to the 12 apostles. The "Fetha Nagäst" ruled all marriage, even
586 684 the non-ecclesiastical "semanya" marriage outside the church premises. Divorce proceedings in the old-Amhara areas still can be carried through only with agreement of the "mänfäs agway", the soul-confessor, one of the priests of the parish, although no divorce is possible in a church marriage.

This "mänfäs agway" receives a small salary from the state; he can summon local state police if the accused mate has refused to appear, to bring him by force. If the divorce is granted, the "mänfäs agway" usually sentences both mates to a fine of Eth$5.- payable to him, on the grounds that both are technically lawbreakers for

1: Messing E-5 (1953-1954)1957 MP5 Amhara MP5

586 684 having "torn the marriage agreement". Furthermore, the woman can bring religious pressure to bear on the "manfas agway" if he hesitates in granting the divorce, by publicly ripping off her blue neckcord, the "mätäb", symbol of Christianity, thus threatening to run off to the Muslims because her mistreatment has become completely unendurable. Since the "Fetha Nägäst" also covers Guardianship, the "mänfäs agway" decides to whom children of a broken marriage are to be assigned: usually children under 7 years of age go to the mother, but an older child may be asked to indicate a choice. Boys over 10 usually are given to the father.

671 The new law codes of Emperor Hailé Selassie I are patterned after European, modern codes and are in the process of more comprehensive codification at present. What has been done so far will be described later.

675 B. Contracts, Oath, and the Legal Person, in Abyssinian Traditinnal Law.

A contract, called "kedan" (the same word is used for "Testament" in Biblical reference), does not have to be written, and usually is not. But it must be witnessed, preferably by more than one reliable person, preferably male. The contracting parties formally announce their agreement, then touch their palms lightly, (ej mätta). If the contract is a last will and testament, the Confessor ("mänfäs agway") holds the thumb of the testator while the will is formally spoken aloud.

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1: Messing E-5 (1953-1954)1957 MP5 Amhara MP5

F. Law and Justice in Transition.

178 671 Emperor Menelik II had tried to limit what Europeans considered draconic penalties and procedures. Emperor Haile Selassie I continued to adjust tribal law to modern conditions, and, as his power increased, expressed the principle, in the Penal Code of 1935: "By learning European practice, (the people) may attain to higher degrees of knowledge, because the basis of our code of laws in many places fits with the European code". Both emperors, while introducing modern acculturation in law and justice, quite consciously, did not, it is clear, abrogate the old tradition. They could not have done so in practice, despite the growing power of the central monarchy. For the traditional values and attitudes, particularly among the Amhara, are still largely intact.

The transitinn can be analyzed as proceeding in four phases: (a) The abrogation of draconic penalties and procedures; (b) continuing customary law and justice, (officially and unofficially); (c) Modernization from the top down; (d) Sectarian privileges to resident minorities.

681 178 671 (a) During the reign of Menelik II enforcement of the old draconic penalties continued. The hand of a thief was cut off, and he was thereafter called "dush" (lit. stump). Cattle rustlers, "dandā", were punished the same way. It was not rare to see mutilated persons, hand or foot or both, in those days. It was not until the coronation of Emperor Haile Selassie I that the Penal Code of 1930 could have been decreed and enforced.

1: Messing E-5 (1953-1954)1957 MP5 Amhara MP5

681 178 671 According to this change, mutilation of thieves was forbidden; the chaining of debtor to creditor was abrogated; flogging was reduced in frequency and quantity; the area that could fall under collective arrest, "afär-sata", was limited; the legal validity of evidence from the "lebäshay" was indirectly abrogated. In 1933, the emperor further limited days, hours, and distances of the "afärsata". Capital punishment had been centralized in 1930.

It is noteworthy that in several cases old practices were for the first time acknowledged in writing, despite the continuing hesitancy to admit publicly any practice that European observers might regard as primitive. Thus, blood-money in place of blood-feud was decreed legal in 1930

426 671 178 Liberalization was also legalized by regarding civil law. In 1923 the Law of Loans fixed maximum interest at 9%. As usual , this was found to be too far a departure from practice for enforcement, and it was later raised to 12%. One of the last decrees prior to Italian hostilities, provided, in May 1935, for the abrogation of statute-labor, permitting the tenant (gabbar) to make a small payment (resembling a quitrent) instead.

694 661 178 (b) The pattern of judges riding circuit continued unabated, from the end of the harvest in the month of Tahsas (about November) until Easter. Sometimes judicial councils, "gubaë" were available in towns for appeals. But the old custom of bringing a gift to the "great man" to interest him in the indivi-

694 dual's case, the "gubba" gift, continued, and it is often
[661] identical with a bribe. At the same time, the old cus-
178 tom which served as a last resort to a poor person to
have his injustice rectified, by appearing with a heavy
stone perched on the back of his neck almost crushing
him, was abrogated because Europeans looked on this as
primitive. The poor man thus has lost his few safeguards,
and now is losing even the right to beg and to create a
traffic hazard by throwing himself before the vehicle of
[171] the great man and shouting "abyet". (The practice of
carrying the rock resembles that of innocently accused
Arab Beduin who appear pressing a blade against their
necks to demonstrate and shout their innocence.

178 Transition thus proceeds in unequal shifts, with
671 many culture lags. Modernization of law and justice
643 proceeds from the top, Addis Ababa, down the pyramid.
One of the reasons for the circuit-riding of the emperor
himself is to remind the chiefs of his realm of his
all-seeing and all-hearing power, just as was done in
the past. He acts as inspector-general.

The Emperor and his High Court in Addis Ababa stil
give lip service to the Fetha Nägäst Code. But in prac-
tice, this amounts to little more than rationalization
for the benefit of the ultra-conservative Amhara nobles.
693 The position of the "afä negus" (lit. Mouthpiece of the
King), who traditionally was the guardian of the Fatha Nä-
gäst code, has now become honorary in practice. In the
past he was the second-most powerful person in the realm,
trusted partly because he was not of the ruling family

1: Messing E-5 (1953-1954)1957 MP5 Amhara MP5

693 and thus not a contender for the throne. He was the chief justice, for he could hear appeals even from the highest court in the land, and act as arbitrator and judge in high-level quarrels between feudal lords and even involving the king himself. His role as chief counselor of the king has now been taken by the "Tsahafi" (lit. scribe), who has risen to that position from that of long-time private secretary, at present Wolda-Giyorgis.

692 The present High Court has original and appellate jurisdiction over all cases in Ethiopia, criminal as well as civil. Majority opinion of the judges prevails. In 1942 a Supreme Imperial Court was appointed to hear appeals from the High Court, but it convenes only intermittently. A secret Crown Court is called together in special treason cases affecting the old nobility, or the officers of the new army.

671 177 A new Civil Law Code is still being worked out, by a series of European jurists invited for that purpose. Meanwhile new decrees are published intermittently in the official "Negarit Gazeta" (lit. the drum gazette), in both Amharic and English. The Attorney-General is a foreigner (for some time Mr. Nathan Marein), but the Minister of Justice, the Legislative Consultative Committee and the President of the High Court are Ethiopians, with a range of modern education from very little to average.

642 The Constitution of 1931, further liberalized in 1955, was a free-will gift of the Emperor. It established a Parliament of two houses, the upper directly appointed,

186 828 Pride in group, military unit; less emphasis on individual heroism.

Steadier temperament; endurance rather than burst of energy.

"If you treat him as a friend, he will serve you faithfully."

186 779 The religious ethnocentrism of the Amhara is based on their belief that their nation, ruled by the "Solomonic Dynasty", became heir to the "Chosen People" ruled by the House of David, when the latter refused to accept Christ. This is not always clear to the illiterate Amhara, but even he emphasizes this intertwined ethnic and religious principle of his ethnocentrism when he regards the name "Amhara" as signifying both, as he always does.

[304] While the Amhara no longer regards circumcision ("gezrat") as the symbol of entering the Covenant of the Faith, as does the Old Testament and the Jewish religion, he does follow this procedure a week after birth; and an uncircumcised man ("lembut") is called several insulting names and regarded as almost on a level with African Shangalla slaves who are also uncircumcised. Circumcision therefore has an intertwined ethnic and religious significance.

671 Amhara legal philosophy, guarded by the church, and expressed therefore in the Geez terminology, analyses the universe as follows:

Natural Law - "tabayawi heg"

Man-made Law - (similar to common law) - "sabawi heg"

Moral Law (particularly Coptic law) - "yabaherya heg" (lit. Law from overseas).

186 Ethnocentrism of the Amhara has for several centuries been consciously directed particularly against the attacking Muslims. The "mutab" neckcord is believed directly the result of one such purposeful development. Numerous proverbs emphasize the stereotype of the Muslim as the breaker of Amhara religious order as well as social order, and the promoter of lawlessness. Even proverbs such as the following,

8: Rey G-5 (1910-1920)1935
MP5 Amhara MP5

to be necessary for ordination: payment of moderate fees ranging up to $5 (about 10s. to-day) appears to be all that is required. In this direction matters do not seem to have progressed much since Bruce wrote in 1790 giving the following description of an ordination: 793

"A number of men and children present themselves at a distance, and there stand from humility, not daring to approach him. He then asks who they are, and they tell him they want to be deacons (*debtera*). On this with a small iron cross on his hands after making two or three signs, he blows with his mouth twice or thrice upon them, saying, 'Let them be deacons'. I saw once all the army of Begemder made deacons, just returned from shedding the blood of 10,000 men, thus drawn up in Aylo Meidan, and the Abouna standing at the Church of St. Raphael, about a quarter of a mile distant from them. With these mingled about 1000 women, who consequently, having part of the same blast and brandishment of the Cross, were as good deacons as the rest."

It is highly regrettable in the interests of Abyssinia that the priesthood, being what they are, should exercise so much power and influence. This is no doubt attributable to a variety of causes, to tradition, wealth, land ownership, and also to the fact that they (or some of them) are the only persons in the country who understand the ancient Geze language in which the Code of Law (the *Fetha Nagast*) and other similar works are written. This gives them a great "pull", and one result is that they are an indispensable adjunct to all the judges, who are very much in their hands. 793 693 [671]

11:Levine Z-4,5 (1958-1961)1965 MP5 Amhara MP5

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THE OLD AND NEW ELITES

121 The disjunction between traditional and modernizing sectors that character-
179 izes the socialization of adolescents informs most aspects of contemporary
178 Ethiopian society. A modern institution of Western inspiration has nearly everywhere been superimposed upon traditional forms, and as yet there has been relatively little interaction between the two.

[433] In the economy, subsistence production according to traditional techniques prevails throughout all Amhara areas. Production for national and international markets is funneled through separate channels: coffee lands and a few tobacco farms in the southern provinces, specialized commerce in a dozen or so provincial centers, and a small number of factories dependent mainly on non-Ethiopian management and, frequently, capital. In the legal [671] realm varied forms of customary law remain authoritative for much provincial litigation, while civil, criminal, and maritime codes based on French and Swiss ideals have been enacted as the law of the nation. The [64] governmental structure is similarly bifurcated, between local authorities who govern in the traditional manner, albeit with reduced powers, and a ministerial [795] system and parliament based on European models. In the case of religious [794] institutions there remains a wide gulf between the orientation of the Orthodox churches and that of such Western-inspired formations as the Theological College and the Orthodox Students Association.

121 This sociological dualism comes to a head in the system of social stratifi-
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178 cation.

11:Levine Z-4,5 (1958-1961)1965 MP5 Amhara MP5

The effect of this literature has not been, as David Riesman suggests is true of the written word generally, an individualizing one. It did not serve to "help liberate the reader from his group and its emotions, and allow the contemplation of alternative responses and the trying on of new emotions."[31] It has served rather to buttress conformity, by rekindling identification with the sacred symbols of the society. Ethiopian religious literature does not invite introspection; it is a corpus to be venerated and solemnly rehearsed. When a devout Ethiopian reads his daily or weekly portion from some writing such as the *Dāwit* (Psalms of David) or the *Weddāssē Māryām* (*Praise of Mary*), he is said to be "repeating" the text—*Dāwit yedaggemāl*. Most of those who learn to read the words of these writings do not understand the Ge'ez in which they are composed.

A similar function has been performed by the secular literature, which runs primarily in praise of royalty and thus has served to uphold the political status quo. The earliest Ethiopian writings are inscriptions of the Aksumite kings dating from the fourth century A.D. Here, in a style that is to persist through the ages, the royal deeds are recounted in meticulous detail and endowed with the highest morality.[32] Ge'ez chronicles were composed in this manner for most of the emperors after the thirteenth century. The earliest specimens of written Amharic consist of hymns in praise of the Emperor Amde Ṣeyon (1314–44).

Two other written works put the capstone on this conservative structure. The *Kebra Nagast*, the Ethiopian national epic, has served chiefly to legitimate the royal line that came to power in the thirteenth century and to cement once and for all the union of monarchy and church. The *Fetha Nagast*, the traditional legal code based on various canon and civil laws compiled in medieval Egypt, has served not as a working code for the adjudication of court cases but as an embellishment of *de facto* decisions, imparting to the judge an increment of authority by virtue of his ritual of referring to them.

Because of the relative sterility of Abyssinian written literature, art, dance, and music, many observers have concluded that Abyssinian culture provides no outlets for truly creative expression.[33] This judgment is not just. The Abyssinian genius freely discloses itself in the stories, verse, and proverbs that make up its very rich *oral* literature. Within this oral tradition, especially in its verse, a good deal of original expression and personalized commentary may be found.

Ethiopic verse comprises a wide variety of forms which differ according to subject and occasion. Classical *qenē*, Ge'ez verse in praise of some holy figure or political leader, is composed by *dabtarā* on certain religious or political holidays. More playful verses of praise are sung in Amharic by *dabtarā* or minstrels on festive occasions. In such verses the poet may in-